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No. 14-280

In the Supreme Court of the United States

HENRY MONTGOMERY,

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE LOUISIANA SUPREME COURT

BRIEF OF CENTER ON THE ADMINISTRATION OF CRIMINAL LAW AS AMICUS CURIAE IN SUPPORT OF JURISDICTION

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QUESTION PRESENTED

Does this Court have jurisdiction to decide whether the Louisiana Supreme Court correctly refused to give retroactive effect in this case to the Court's decision in *Miller* v. *Alabama*, 567 U. S. ____ (2012)?

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BRIEF FOR AMICUS CURIAE CENTER ON THE ADMINISTRATION OF CRIMINAL LAW

The Center on the Administration of Criminal Law (the "Center") respectfully submits this amicus curiae brief in support of the Court's jurisdiction in this case.[1]

INTEREST OF AMICUS CURIAE

The Center, based at New York University School of Law, is dedicated to defining and promoting good government practices in the criminal justice system through academic research, litigation, and formulating public policy. One of the Center's guiding principles in selecting cases to litigate is identifying cases that raise substantial legal issues regarding interpreting the Constitution, statutes, regulations, or policies. The Center supports challenges to practices that raise fundamental questions of defendants' rights or that the Center believes constitute a misuse of government resources in view of law-enforcement priorities. The Center also defends criminal justice practices where discretionary decisions align with applicable law and standard practices and are consistent with law-enforcement priorities. The Center's appearance as amicus curiae in this case is

[1] No party or counsel for a party to this case authored this brief in whole or in part, and no person or entity other than amicus curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief. Both parties consented to the filing of amicus briefs, and their written consent letters have been filed with the Clerk of the Court.

prompted by its belief that the Court has jurisdiction, pursuant to its Article III powers, to remedy the violation of an individual's Constitutional right against the imposition of cruel and unusual punishment. Furthermore, the Center believes that ensuring defendants have access to judicial redress of such violations in every jurisdiction across the United States is necessary for a fair and equitable administration of the criminal justice system. This case, therefore, is an important one to the Center's mission.

SUMMARY OF ARGUMENT

The decision below addressed multiple issues of federal law that this Court has jurisdiction to review. Even setting aside the ultimate merits issue regarding whether *Miller* is retroactive—itself a question of federal law—the Louisiana Supreme Court determined that *Miller* announced a "new rule" of criminal constitutional law and that the rule is procedural. In so doing, the Louisiana Supreme Court looked not to its own state decisional law, but rather to this Court's retroactivity decisions, including *Teague*. Wrought with interpretations of federal law, the decision below necessitates, at a minimum, this Court's presumption in favor of jurisdiction.

More fundamentally, resolving splits among state courts on federal issues is among this Court's principal purposes. At the Framing, this Court was *the* federal court. As such, it was tasked with bringing uniformity to the interpretations of federal questions among the states. That Congress since established inferior federal courts does nothing to change the Court's purpose—nor its appellate jurisdiction—as originally intended. When it comes to matters of federal law, there is still only "one supreme Court."

U.S. Const. art. III, § 1. If the Court declines to exercise jurisdiction over this case, then the judicial power of our Union would rest not in "one supreme Court," but in *fifty-one*.

ARGUMENT

I. THE JUDGMENT BELOW PRESENTS MULTIPLE ISSUES OF FEDERAL LAW

This Court "possess[es] jurisdiction to review state-court determinations that rest upon federal law." *Oregon* v. *Guzek*, 546 U.S. 517, 521 (2006). And it is federal law upon which the decision below finds its underpinnings.

A. The Louisiana Supreme Court Interpreted Federal Law when It Held that *Miller* Announced a "New Rule"

Only certain "new rules" of criminal constitutional law apply retroactively. *See Schriro* v. *Summerlin*, 542 U.S. 348, 351–52 (2004). Where the new rule is substantive in nature—i.e., "narrow[s] the scope of a criminal statute by interpreting its terms" or "place[s] particular conduct or persons covered by the statute beyond the State's power to punish"—then it is generally retroactive. *Id.* But where the new rule is procedural, it applies retroactively only if it is "watershed" in the sense that it "implicat[es] the fundamental fairness and accuracy of the criminal proceeding." *Id.* at 352 (citation omitted) (internal quotation marks omitted). This duality flows from *Teague* v. *Lane*, 489 U.S. 288 (1989). *See Danforth* v. *Minnesota*, 552 U.S. 264, 266 & n.1 (2008).

Yet before a court may address either of these *Teague* exceptions, it must first satisfy itself that the rule is in fact "new." *See Beard* v. *Banks*, 542 U.S. 406, 411 (2004) (explaining the three-step process for

determining retroactivity). This task is "often difficult." *Teague*, 489 U.S. at 301 (O'Connor, J., plurality opinion). But "[i]n general," a new rule is announced when a given "result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.* And just as only this Court can announce a "new rule" subject to potential retroactive application, *see Danforth*, 522 U.S. at 266, only this Court's prior decisions are considered "precedent" for purposes of determining whether a particular result was "*dictated* by precedent," *see O'Dell* v. *Netherland*, 521 U.S. 151, 159–60 (1997) ("The array of views expressed in *Simmons* itself suggests that the rule announced there was, *in light of this Court's precedent*, 'susceptible to debate among reasonable minds.'" (emphasis added) (citation omitted)). It therefore follows that, when determining whether a constitutional rule is "new," courts must interpret federal law. *Lambrix* v. *Singletary*, 520 U.S. 518, 524 (1997) ("[T]he *Teague* inquiry requires a detailed analysis of federal constitutional law."); *see Saffle* v. *Parks*, 494 U.S. 484, 488 (1990) (whether a rule is "new" requires interpreting "the constitutional standards that prevailed at the time the original proceedings took place" (citation omitted) (internal quotation marks omitted)). That is what the Louisiana Supreme Court did.

The decision below rests entirely on *State* v. *Tate*.[2] *State* v. *Montgomery*, 141 So. 3d 264, 265 (La.

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[2] The summary nature of the order below is not dispositive of whether it "rests upon federal law" under *Guzek*. *See* 546 U.S. at 521. In such situations, the Court reviews the grounds supporting the summary order to determine whether *that* authority rests upon federal law. *E.g.*, *Oregon* v. *Kennedy*, 456

2014) (Mem.) (citing *State* v. *Tate*, 130 So. 3d 829 (La. 2013)). In *Tate*, the Louisiana Supreme Court held that *Miller* v. *Alabama*, 567 U.S. ____, 132 S. Ct. 2455 (2012), does not apply retroactively in state collateral proceedings. 130 So. 3d at 831, 841. *Tate* reasoned that *Miller* set forth a new procedural rule that is "neither substantive nor implicative of the fundamental fairness and accuracy of criminal proceedings." *Id.* at 831. In simple terms, by answering the threshold question *did* Miller *establish a "new rule" of constitutional law?*, the Louisiana Supreme Court necessarily decided an issue of federal law.[3] *Stringer* v. *Black*, 503 U.S. 222, 227–28 (1992)

U.S. 667, 671 (1982) (discussing the cases cited within the judgment below); *Delaware* v. *Prouse*, 440 U.S. 648, 653 (1979) (same); *see also Coleman* v. *Thompson*, 501 U.S. 722, 739 (1991) ("It remains the duty of the federal courts to determine the scope of the relevant state court judgment.").

[3] This is true regardless of the Louisiana Supreme Court's ultimate holding that *Miller* does not satisfy the next-level criteria for retroactive application, because if the rule was not "new," then the court (presumably) would never have decided whether it fit into one of *Teague*'s exceptions. *See O'Dell*, 521 U.S. at 156–57 ("*If the rule is determined to be new*, the final step in the *Teague* analysis requires the court to determine whether the rule nonetheless falls within one of the two narrow exceptions to the *Teague* doctrine." (emphasis added)).

Moreover, the *Tate* court's intermediate conclusion that the rule from *Miller* is procedural also passed on a federal question and required an interpretation of this Court's decisions. *See Tate*, 130 So. 3d at 836 ("We note while the 'distinction between substance and procedure is an important one,' it is not necessarily always a simple matter to divine." (quoting *Bousley* v. *United States*, 523 U.S. 614, 620 (1998))); *id.* at 838 ("[B]ecause the *Miller* Court, like the Court in *Summerlin*, merely altered the *permissible methods* by which the State could exercise its

(whether a constitutional rule is "new" is the "initial question" in the retroactivity analysis).

Accordingly, the Louisiana Supreme Court's antecedent ruling in *Tate*—that *Miller* "establishe[d] a new rule" of criminal constitutional law, 130 So. 3d at 835—presents a question of federal law that gives the Court jurisdiction in this case.[4] *See Saffle*, 494 U.S. at 488 ("Under this functional view of what constitutes a new rule, our task is to determine whether a state court considering [a petitioner's] claim at the time his conviction became final would have felt compelled by existing precedent to conclude that the rule [petitioner] seeks was *required by the Constitution*." (emphasis added)); *see, e.g.*, *Liner* v. *Jafco, Inc.*, 375 U.S. 301, 304 (1964) (antecedent "question of mootness is *itself* a question of federal law upon which [the Court] must pronounce final judgment" (emphasis added)).

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continuing power, in this case to punish juvenile homicide offenders by life imprisonment without the possibility of parole, we find its ruling is procedural, not substantive in nature.").

[4] Contrary to what the Amicus Against Jurisdiction argues, this Court's review of the judgment below would not provide "an additional remedy implied from the Constitution that requires state courts to make collateral review available." Brief for Willkie Farr & Gallagher LLP as Court-Appointed Amicus Curiae Arguing Against Jurisdiction, *Montgomery* v. *Louisiana*, No. 14-280 (U.S. June 17, 2015), at 29 [hereinafter Amicus Br.]. Nor does Petitioner ask the Court to rule that *Teague* is binding on all state habeas proceedings. Rather, Petitioner asks only that the Court review whether Louisiana's application of *Teague* was correct *in this case*. And even if Petitioner's claim was that *Teague* is binding on all state habeas proceedings, this Court would *still* have jurisdiction to decide that issue because it arises from a state court's interpretation of what federal law requires. *See Guzek*, 546 U.S. at 521.

B. The *Long* Presumption In Favor of Jurisdiction Applies Based on the Decision in *Tate*

"[W]here the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, [the Court's] jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment." *Fox Film Corp.* v. *Muller*, 296 U.S. 207, 210 (1935); *Murdock* v. *City of Memphis*, 87 U.S. (20 Wall.) 590, 636 (1874). The Court resolves close calls with a presumption in favor of jurisdiction:

> [W]hen . . . [1] a state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law, and [2] when the adequacy and independence of any possible state law ground is not clear from the face of the opinion, [the Court] will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so.

Michigan v. *Long*, 463 U.S. 1032, 1040–41 (1983). For the *Long* presumption *not* to apply, the state-court decision must "indicate[ ] *clearly* and *expressly* that it is alternatively based on bona fide separate, adequate, and independent grounds[.]" *Id.* at 1041 (emphases added).

The first prong of the *Long* presumption applies. The Louisiana Supreme Court's judgment relied entirely on its earlier *Miller* retroactivity analysis in *Tate*. *See Montgomery*, 141 So. 3d at 264. The *Tate* court, in turn, made clear that its analysis was "*directed by* the *Teague* inquiry." 130 So. 3d at 834 (emphasis added). In "[a]pplying the *Teague* analysis

[t]herein," *id.* at 835, the *Tate* court relied on *nineteen*[5] of this Court's retroactivity decisions without once "mak[ing] clear by a plain statement that the federal cases are being used only for the purpose of guidance[.]" *Long*, 463 U.S. at 1041; *see Tate*, 130 So. 3d at 834–41 & n.3. Perhaps unsurprisingly, the cases cited in *Tate* are the same cases relied upon by the Fourth and Eighth Circuits in passing on the *Miller* retroactivity question. *Compare id.*, *with Thompson* v. *Roy*, ___ F.3d ___, 2015 WL 4231629 (8th Cir. July 14, 2015), *and Martin* v. *Symmes*, 782 F.3d 939, 942–45 (8th Cir. 2015), *and Johnson* v. *Ponton*, 780 F.3d 219, 223–26 (4th Cir. 2015); *see also In re Pendleton*, 732 F.3d 280 (3d Cir. 2013) (per curiam) (granting application to file successive habeas petition in view of *Miller*); *In re Morgan*, 713 F.3d 1365 (11th Cir. 2013) (denying application to file successive habeas petition in view of *Miller*). At a minimum, then, the *Tate* court's analysis "fairly appears to rest primarily on federal law, or to be interwoven with the federal law."[6] *Long*, 463 U.S. at 1040–41.

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[5] This number includes cases cited within citations. In total, the *Tate* court cited thirty-one of this Court's decisions. *See* 130 So. 3d at 834–41.

[6] The Amicus Against Jurisdiction contends that the fact "[t]hat a state models state law on non-binding federal law does not make state and federal law 'interwoven.' To use a weaving analogy, imagine that another designer models her suit on a classic Chanel suit. The two suits would look similar but they would not be interwoven." Amicus Br. at 15. But this analogy unravels when one considers that the Louisiana Supreme Court is not *modeling* its analysis after anything—it is importing *Teague* from One First Street and sewing a "MADE IN LOUISIANA" tag on it. And so, while the Amicus effectively suggests that a rose by any other name would not smell as sweet,

Long's second prong also is satisfied because "the adequacy and independence of any possible state law ground is not clear from the face of the [*Tate*] opinion." *Id.* Indeed, in conducting its retroactivity analysis, the *Tate* Court cited only two Louisiana state-court decisions: (1) *State ex rel. Taylor* v. *Whitley*, 606 So. 2d 1292 (La. 1992), which established *Teague* as the standard for retroactivity in Louisiana, *see Tate*, 130 So. 3d at 834, and (2) *State* v. *Huntley*, 118 So. 3d 95 (La. Ct. App. 2013), which appeared after a *see also* citation and without further discussion or commentary (or even a parenthetical), *see Tate*, 130 So. 3d at 841. These fleeting passages fall well short of "indicat[ing] clearly and expressly that [the decision] is based on bona fide separate, adequate, and independent [state] grounds." *Long*, 463 U.S. at 1041; *see Florida* v. *Powell*, 559 U.S. 50, 57 (2010) ("Although invoking Florida's Constitution and precedent in addition to this Court's decisions, the Florida Supreme Court treated state and federal law as interchangeable and interwoven; the court at no point expressly asserted that state-law sources gave Powell rights distinct from, or broader than, those delineated in *Miranda*."); *Ohio* v. *Robinette*, 519 U.S. 33, 37 (1996) ("[T]he opinion [below] clearly relies on federal law Indeed, the only cases it discusses or even cites are federal cases, except for one state case which itself applies the Federal Constitution."); *Kennedy*, 456 U.S. at 671 ("With one exception, the cases [the lower court] cited in outlining the 'general rule' that guided its decision are decisions of this Court.").

Coco Chanel knew better. *See generally* Tilar J. Mazzeo, *The Secret of Chanel No. 5: The Intimate History of the World's Most Famous Perfume* (2010).

Both prongs of *Long* satisfied, the Court should "accept as the most reasonable explanation that the [Louisiana Supreme Court] decided [*Tate*] the way it did because it believed that federal law required it to do so." *Long*, 463 U.S. at 1040–41; *see Hawaii* v. *Office of Hawaiian Affairs*, 556 U.S. 163, 172–73 (2009) ("Far from providing a 'plain statement' that its decision rested on federal law, the State Supreme Court plainly held that its decision was 'dictate[d]' by federal law

Based on these and the remainder of the State Supreme Court's [ ] references to [federal law], we have no doubt that the decision below rested on federal law. We are therefore satisfied that this Court has jurisdiction." (first alteration in original) (paragraph break omitted) (citing 28 U.S.C. § 1257) (internal citations omitted)).

C. *Teague*, Once Adopted, Must Be Faithfully Applied

State courts are not required to apply federal standards in their own collateral-review proceedings. *See Danforth*, 552 U.S. at 278–79. But "it is 'inherent in the constitutional plan' that when a state court takes cognizance of a case, the [parties] assent[ ] to appellate review by this Court of the federal issues raised in the case." *McKesson* v. *Div. of Alcoholic Beverages & Tobacco, Fla. Dep't of Bus. Regulation*, 496 U.S. 18, 30 (1990) (quoting *Monaco* v. *Mississippi*, 292 U.S. 313, 329 (1934)); *see also S. Cent. Bell Tele. Co.* v. *Alabama*, 526 U.S. 160, 166 (1999) ("Our holding in *McKesson* confirmed a long-established and uniform practice of reviewing state-court decisions on federal matters . . . ."). So once a state court elects to employ a federal test and to interpret federal law, that court must apply the test faithfully—and correctly. Whether it has done so is a question for this Court:

> To secure state-court compliance with, and national uniformity of, federal law, the exercise of jurisdiction by state courts over cases encompassing issues of federal law is subject to two conditions: State courts must interpret and enforce faithfully the 'supreme Law of the Land,' and *their decisions are subject to review by this Court.*

McKesson, 496 U.S. at 28–29 (emphasis added) (quoting U.S. Const. art. VI, cl. 2).

The Louisiana Supreme Court was not required to "take[ ] cognizance" of *Teague* as the governing standard for its retroactivity decisions. *McKesson*, 496 U.S. at 30; *see Danforth*, 552 U.S. at 278–79. But it did so in no uncertain terms.[7] *See Whitley*, 606 So. 2d at 1296 ("We adopt the *Teague* standards for all cases on collateral review in our state courts."); *see also Tate*, 130 So. 3d at 834. The Amicus Against Jurisdiction claims that the Louisiana Supreme Court "could not have provided a clearer or plainer statement that [it] believed it was *not bound* in state collateral

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[7] Indeed, after noting that it was not bound to adopt *Teague*, the court reiterated that it nonetheless was "adopt[ing] Justice Harlan's views on retroactivity, as modified by *Teague* and subsequent decisions, for all cases on collateral review in [Louisiana] state courts." *Whitley*, 606 So. 2d at 1297. And directly after that clarification, the court stated: "*Having set forth the relevant standard*, we now turn to the merits of the present case." *Id.* (emphasis added); *see also Tate*, 130 So. 3d at 834 ("*[T]he standards* for determining retroactivity set forth in *Teague* v. *Lane* apply to all cases on collateral review in our state courts." (emphasis added) (citations omitted)). The court was therefore clear that it was using *Teague*.

proceedings for final convictions by federal law on retroactivity." Amicus Br. at 13. But that is irrelevant, because even if the Louisiana Supreme Court had written a thousand times, "we are *not bound* by *Teague*," once it chose to adopt the *Teague* standard, it was bound by the Supremacy Clause to apply *Teague* faithfully.[8] *See McKesson*, 496 U.S. at 28–30.[9]

In *American Trucking Associations, Inc.* v. *Smith*, the Court held that a federal question was presented when "the Arkansas Supreme Court decided

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[8] In any event, the Amicus Against Jurisdiction relies on a misreading of *Whitley*, which simply stated that the Louisiana Supreme Court was "not bound *to adopt* the *Teague* standards." 606 So. 2d at 1296 (emphasis added). Nowhere, however, has the Louisiana Supreme Court stated that it is not bound by *Teague* after having expressly adopted *Teague*, and the Amicus Against Jurisdiction has not provided any citation to that effect, nor any instances in which the Louisiana Supreme Court expressly departed from *Teague* after *Whitley*. For an example of a case in which a state court did provide a "clear[ ] or plain[ ] statement[ ]" that it is "*not bound* in state collateral proceedings for final convictions by federal law on retroactivity," Amicus Br. at 13, see *State* v. *Whitfield*, 107 S.W.3d 253, 268 (Mo. 2003) ("For these reasons, as a matter of state law, this Court chooses not to adopt the *Teague* analysis . . . .").

[9] *See also Stone* v. *Powell*, 428 U.S. 465, 530 (1976) (Brennan, J., dissenting) ("[S]ome might be expected to dispute the academic's dictum seemingly accepted by the Court that a federal judge is not necessarily more skilled than a state judge in applying federal law. For the Supremacy Clause of the Constitution proceeds on a different premise, and Congress, as it was constitutionally empowered to do, made federal judges (and initially federal district court judges) 'the primary and powerful reliances for vindicating every right given by the Constitution, the laws, and treaties of the United States.'" (quoting *Zwickler* v. *Koota*, 389 U.S. 241, 247 (1967))).

that under *Chevron Oil* [the Court's] decision in *Scheiner* need only apply prospectively." 496 U.S. 167, 178 (1990); *see id.* ("This decision presents a federal question: Did the Arkansas Supreme Court apply *Chevron Oil* correctly?"). This case mirrors *American Trucking*, and the outcome should be the same: A federal question is presented because "the [Louisiana] Supreme Court decided that under [*Teague*] [the Court's] decision in [*Miller*] need only apply prospectively." *See id.*; *cf. Vermont* v. *Brillon*, 556 U.S. 81, 91 (2009) ("[T]he Vermont Supreme Court made a fundamental error in its application of [the test from] *Barker* that calls for this Court's correction.").

Teenagers, of course, are *not required* to get a driver's license upon turning a certain age—doing so is purely a matter of choice. Yet once a teenager gets her driver's license, she *is required* to follow traffic laws that otherwise would not apply to her. The same is true with respect to state courts employing the *Teague* test—nothing requires them to adopt *Teague*, but once they do, they must apply correctly the federal case law interpreting *Teague*.[10] It falls to this Court to ensure that those courts are following the rules of the federal road.[11] *See Virginia* v. *Moore*, 553 U.S. 164, 171–74

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[10] In our federalist system, of course, federal courts are equally bound to apply faithfully the decisions of the highest court of a State when construing a matter of state law. *Metcalf* v. *City of Watertown*, 153 U.S. 671, 678–79 (1894).

[11] The same is true with respect to states adopting collateral-review procedures in the first instance. The Amicus Against Jurisdiction correctly states that "[t]he federal Constitution does not require the 'availability of collateral attack' against final convictions in state courts." Amicus Br. at 28 (quoting *Murray* v.

(2008) (affirming, post-*Danforth*, that when States choose to fashion remedies greater than those required by the Constitution, they may do so only as a matter of state law); *see also Oregon* v. *Hass*, 420 U.S. 714, 719 (1975) (states are "free as a matter of [their] own law[s] to impose greater restrictions" than the this Court holds are required by federal constitutional standards, but "may not impose such greater restrictions *as a matter of federal constitutional law*" when this Court specifically refrains from imposing them (emphasis added)).

II. ARTICLE III GRANTS THIS COURT JURISDICTION OVER THIS CASE

A. The Framers Designed This Court to be the Final Arbiter of Federal Law—Whether Cases Originate in State or Federal Courts

This is the "one supreme Court." U.S. Const. art. III, § 1. And at the Framing, this was the one *federal* court. This Court's appellate jurisdiction is therefore predicated on the Court's ability to review state-court decisions on matters of federal law. Indeed, the resolution of conflicts among *state* courts on matters of federal law is a "principal purpose" of

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Giarratano, 492 U.S. 1, 10 (1989)). Indeed, states may opt to not provide collateral-review procedures. But this misses the point—if states choose to provide such procedures, then they must abide by federal law when carrying them out. *See* Henry M. Hart, Jr., *The Relations Between State and Federal Law*, 54 Colum. L. Rev. 489, 507 (1954) ("The supremacy clause . . . makes plain that if a state court undertakes to adjudicate a controversy it must do so in accordance with whatever federal law is applicable.").

this Court's jurisdiction. *Braxton* v. *United States*, 500 U.S. 344, 347 (1991); *see, e.g.*, *Nat'l Private Truck Council, Inc.* v. *Okla. Tax Comm'n*, 515 U.S. 582, 585–86 (1995); *PUD No. 1 of Jefferson Cnty.* v. *Wash. Dep't of Ecology*, 511 U.S. 700, 710 (1994). Justice Story explained that was always the plan:

> Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself: If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable; and it cannot be believed that they could have escaped the enlightened convention which formed the constitution. What, indeed, might then have been only prophecy, has now become fact; and the appellate jurisdiction must continue to be the only adequate remedy for such evils.

Martin v. *Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 348 (1816); *see also Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 386–87 (1821) (Marshall, C.J.) ("When we observe the importance which that constitution attaches to the independence of judges, we are the less inclined to suppose that it can have intended to leave these constitutional questions to tribunals where this independence may not exist . ").

Uniformity among state courts' decisions applying the Constitution—the "fundamental and paramount law of the nation," *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)—was exceptionally important during the early years of the Republic. *See Martin*, 1 Wheat. at 347–48 ("*uniformity* of decisions throughout the whole United States, upon all subjects within the purview of the constitution" is a "necessity"). For the Framers had "anxiety" about "preserv[ing] [the Constitution] in full force, in all its powers, and guard[ing] against resistance to or evasion of its authority, on the part of a State." *Ableman* v. *Booth*, 62 U.S. (21 How.) 506, 524 (1858); *see* The Federalist No. 82, at 493 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("[State courts] will of course be natural auxiliaries to the execution of the laws of the Union, and an appeal from them will as naturally lie to that tribunal which is destined to unite and assimilate the principles of national justice and the *rules of national decisions*." (emphasis added)).

Little has changed since then. *See Kansas* v. *Marsh*, 548 U.S. 163, 183 (2006) (Scalia, J., concurring) ("Our principal responsibility under current practice, . and a primary basis for the Constitution's allowing us to be accorded jurisdiction to review state-court decisions, is to ensure the integrity and uniformity of federal law." (citing U.S. Const. Art. III, § 2, cls. 1, 2)); *Danforth*, 552 U.S. at 310 (Roberts, C.J., dissenting) ("ensur[ing] the uniformity of federal law" is "fundamental"); *see also* Richard H. Fallon, Jr., et al., Hart & Wechsler's The Federal Courts and the Federal System 509 (5th ed. 2003) ("A significant purpose of Article III . is to permit the Supreme Court to unify federal law by reviewing state court decisions of federal questions."); C-Span, *Supreme Court Chief Justice Roberts and Justice Stevens* (Oct. 9, 2009),

available at http://www.c-span.org/video/?7654-1/supreme-court-chief-justice-roberts-justice-stevens ("Our main job is to try to make sure federal law is uniform across the country." (remark of Chief Justice John Roberts)).

This Court, as "the final arbiter of federal law," *Danforth*, 552 U.S. at 291–92, 310, has jurisdiction to resolve conflicts among the states regarding provisions of the Constitution—including habeas corpus. *See* U.S. Const. art. I, § 9, cl. 2 ("The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95 (1807) (Marshall, C.J.) ("[W]hen we say *the writ of habeas corpus*, without addition, we most generally mean that great writ which is now applied for; and in that sense it is used in the constitution."). That is, on balance, the Court's "province and duty"—"emphatically" so. *See Marbury*, 1 Cranch at 177.

B. Who Else But this Court Might Resolve the Interstate Conflict Over *Miller* Retroactivity?

Miller v. *Alabama* implicates constitutional rights. *See* 567 U.S. at ____, 132 S. Ct. at 2469 ("We therefore hold that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders."). So, too, does *Teague* v. *Lane*, insomuch as it instructs when a new constitutional rule applies retroactively. *See* 489 U.S. at 304 (O'Connor, J., plurality opinion) ("[T]he procedur[al] [rule] at issue must implicate the fundamental fairness of the trial."). To be sure, Justice Harlan's concurrence in *Mackey* v. *United States*, which formed the foundation for *Teague*'s second exception, noted that habeas relief "ought always to lie

for claims of nonobservance of those procedures that . are 'implicit in the concept of ordered liberty.'" 401 U.S. 667, 693 (Harlan, J., concurring) (quoting *Palko* v. *Connecticut*, 302 U.S. 319, 325 (1937) (Cardozo, J.)); *see Teague*, 489 U.S. at 312. This notion flows directly from federal constitutional protections by which states must abide. *See Palko*, 302 U.S. at 324–25 (referring to the Fourteenth Amendment).

State courts have reached contrary conclusions regarding whether the rule from *Miller* should apply retroactively. Some say yes; others say no. *See Martin*, 782 F.3d at 945 (collecting cases). And many claim to have reached their conclusion under *Teague*. *Compare Ex parte Williams*, ___ So. 3d ___, 2015 WL 1388138, at *4–5 (Ala. Mar. 27, 2015) (applying *Teague* and holding that *Miller* is not retroactive), *and Chambers* v. *State*, 831 N.W.2d 311, 324 (Minn. 2013) (same), *with Aiken* v. *Byars*, 765 S.E.2d 572, 575 & n.4 (S.C. 2014) (applying *Teague* and holding that *Miller* is retroactive), *and Ex parte Maxwell*, 424 S.W.3d 66, 70–71 (Tex. Crim. App. 2014) (same).

One of these assemblages is wrong. *Teague* and the Constitution cannot both *require* and *not require* that *Miller* apply retroactively. States are either denying prisoners the constitutional protections of the Eighth Amendment or they are misconstruing federal law in granting relief under *Teague*.[12] It falls to this

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[12] That is so, on the second point, even if state courts might still grant relief under state law. *See Moore*, 553 U.S. at 174 ("A State is free to prefer one search-and-seizure policy among the range of constitutionally permissible options, but its choice of a more restrictive option does not render the less restrictive ones unreasonable, and hence unconstitutional.").

Court to remedy this incongruity, *see Martin*, 1 Wheat at 348, especially given the substantial import of these state-court decisions. *See Lockhart* v. *Fretwell*, 506 U.S. 364, 376 (1993) (Thomas, J., concurring) ("[A] state trial court's interpretation of federal law is no less authoritative than that of the federal court of appeals in whose circuit the trial court is located.").

C. This Court Must Set the Federal Floor

Though "the remedy a state court *chooses* to provide its citizens for violations of the Federal Constitution is primarily a question of state law," *Danforth*, 552 U.S. at 288 (emphasis added), there nonetheless exists a federal floor with respect to the minimum level of relief that states *must* provide.[13]

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[13] "Federal law simply 'sets certain minimum requirements that States must meet but may exceed in providing appropriate relief.'" *Danforth*, 552 U.S. at 288 (quoting *Smith*, 496 U.S. at 178–179); *see McKesson*, 496 U.S. at 51–52 ("The State is free to choose which form of relief it will provide, so long as that relief satisfies *the minimum federal requirements* we have outlined." (emphasis added)); *Harper* v. *Va. Dep't of Taxation*, 509 U.S. 86, 102 (1993) ("State law may provide relief beyond the demands of federal due process, but under no circumstances may it confine petitioners to a lesser remedy[.]"); *Danforth*, 552 U.S. at 276 ("[The Oregon Supreme Court] correctly stated that '[state courts] are free to choose the degree of retroactivity or prospectivity which [they] believe appropriate to the particular rule under consideration, so long as [state courts] give federal constitutional rights *at least as broad* a scope as the United States Supreme Court requires.'" (emphasis added) (quoting *State* v. *Fair*, 502 P.2d 1150, 1152 (Or. 1972)). "[O]f course, when [this Court] found that a state court erred in holding that a particular right should not apply retroactively, the state court was bound to comply." *Danforth*, 552 U.S. at 295 (Roberts, C.J., dissenting) (citing *Kitchens* v. *Smith*, 401 U.S. 847 (1971) (per curiam) (reversing

The question whether a petitioner should be entitled to relief in state post-conviction proceedings for a constitutional violation therefore presents important issues for both the states *and* the federal government. *See id.* at 291 (describing the availability of remedies as "a mixed question of state and federal law").

This Court has gone to great lengths to ensure that litigants may vindicate their federal rights in state courts without suffering unnecessary burdens imposed by state procedures. In *Brown* v. *Western Railway of Alabama*, the Court stated that a "federal right cannot be defeated by the forms of local practice," and held that the local rule being asserted by Alabama imposed "unnecessary burdens upon rights of recovery authorized by federal laws." 338 U.S. 294, 296, 298 (1949). In *Felder* v. *Casey*, the Court required a state procedural rule to "give way to vindication of [a] federal right when that right is asserted in state court" because of "[p]rinciples of federalism, as well as the Supremacy Clause." 487 U.S. 131, 153 (1988). And in *Haywood* v. *Drown*, this Court noted that States "lack authority to nullify a federal right or cause of action they believe is inconsistent with their local policies." 556 U.S. 729, 736 (2009).

Plaintiffs in *Brown*, *Felder*, and *Haywood* were entitled to receive the same treatment of their federal

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Georgia Supreme Court's ruling that *Gideon* v. *Wainwright* did not apply retroactively); *Arsenault* v. *Massachusetts*, 393 U.S. 5, 6 (per curiam) (1968) (reversing Massachusetts Supreme Court's ruling that *White* v. *Maryland* did not apply retroactively); *McConnell* v. *Rhay*, 393 U.S. 2, 3 (1968) (per curiam) (reversing Washington Supreme Court's ruling that *Mempa* v. *Rhay* did not apply retroactively)).

claims in state court as they would have received in federal court. Such equal treatment is even more critical here, because Petitioner and those similarly situated have no choice of forum—under federal law, state prisoners *must* exhaust state remedies before they can petition for habeas relief in federal court.[14] 28 U.S.C. § 2254(b)(1)(A) (2012) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has

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[14] The Amicus Against Jurisdiction contends:

> It is the federal habeas statute that provides the authority for *Teague*'s exceptions to the finality of state convictions that require retroactivity for some new constitutional rules in federal habeas cases. That federal statute, however, imposes requirements on only federal habeas courts. . . . Petitioner may file a case in federal court seeking a federal habeas writ and argue there that *Miller* fits within the *Teague* exceptions.

Amicus Br. at 4–5 (paragraph break omitted). But this argument fails for at least the reason that it would be a waste of judicial resources to require Petitioner to present his claim in federal court in Louisiana when the federal court would apply the same *Teague* standards as the Louisiana Supreme Court. Moreover, that a state habeas petitioner *could* subsequently seek to vindicate her rights through federal habeas proceedings is of no moment with respect to whether this Court has jurisdiction over the case presented. *See ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 623 (1989) ("[Dismissal] . . would require petitioners to commence a new action in federal court to vindicate their rights under federal law, even though right now they present us with a case or controversy that is justiciable *under federal standards*." (emphasis added)); *cf. Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U.S. 249, 262–63 (1933) (a justiciable controversy is not "any the less so because through a modified procedure appellant has been permitted to present it in the state courts").

exhausted the remedies available in the courts of the State[.]"). Much like it did with respect to the challenged procedures in *Brown*, *Felder*, and *Haywood*, the Court here may decide whether the Louisiana Supreme Court is determining retroactivity in ways that unnecessarily burden Petitioner's rights under *Miller* and the Eighth Amendment.

CONCLUSION

As the final arbiter of federal law, the Court has jurisdiction in this case to decide the retroactivity of *Miller* and to resolve the split among state courts.

Respectfully submitted,

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